

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES CARL KELLY,

Plaintiff,

v.

WILLIAM OGLESBY, et al.,

Defendants.

No. 1:25-cv-00042-KES-SAB (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS IN PART AND  
DIRECTING PLAINTIFF TO PAY THE  
FILING FEE IN ORDER TO PROCEED  
WITH THIS ACTION

Doc. 11

Plaintiff James Carl Kelly is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 3, 2025, plaintiff filed a complaint initiating this action, along with a declaration in support of in forma pauperis status.<sup>1</sup> Docs. 1, 2. On January 13, 2025, the assigned

<sup>1</sup> Plaintiff's complaint and declaration were initially filed in the Northern District of California, Case No. 4:25-cv-00048. The case was transferred to this district on January 8, 2025. Docs. 7, 8. On January 21, 2025, plaintiff filed an application in the Northern District to proceed in forma pauperis. No. 4:25-cv-00048 (N.D. Cal.), Doc. 8. However, as explained below, plaintiff is ineligible to proceed in forma pauperis under the three-strikes provision of 28 U.S.C. § 1915(g), so reviewing it would be futile. *Kelly v. Newsom*, No. 1:25-CV-00154 JLT EPG (PC), 2025 WL 950621, at \*1 (E.D. Cal. Mar. 28, 2025) (recognizing that filing a motion to proceed in forma pauperis would be futile where barred by 28 U.S.C. § 1915(g)).

1 magistrate judge issued findings and recommendations recommending that plaintiff be required to  
2 pay the filing fee to proceed with this action because he is ineligible to proceed in forma pauperis  
3 pursuant to the “three-strikes” provision in 28 U.S.C. § 1915(g). Doc. 11. Specifically, the  
4 findings and recommendations found that plaintiff has accumulated three “strikes” and that he  
5 failed to meet the imminent danger exception outlined in 28 U.S.C. § 1915(g).<sup>2</sup> *Id.* at 2–3.

6       The findings and recommendations were served on plaintiff and contained notice that any  
7 objections thereto were to be filed within fourteen (14) days after service. *Id.* at 4. Plaintiff did  
8 not file objections, and the time to do so has expired.

9       In accordance with 28 U.S.C. § 636(b)(1), this Court has conducted a de novo review of  
10 the case. Having reviewed the file, the Court concludes that two of the four prior cases cited by  
11 the magistrate judge do not constitute strikes under 28 U.S.C. § 1915(g). However, the Court  
12 finds that plaintiff nonetheless has three prior strikes under section 1915(g):

- 13       1. Kelly v. Gyorkey, No. 2:11-cv-02142-WBS-EFB (E.D. Cal.) (dismissed for failure to  
14           prosecute and failure to state a claim on August 3, 2012);
- 15       2. Kelly v. Elit, No. 1:18-cv-00019-DAD-SAB (E.D. Cal.) (dismissed for failure to state a  
16           claim on June 25, 2018); and
- 17       3. Kelly v. Sao, No. 1:18-cv-00484-DAD-EPG (E.D. Cal.) (dismissed for failure to state a  
18           claim on October 16, 2018).

19       The Court otherwise finds that the findings and recommendations are supported by the  
20 record and by proper analysis.

21       Accordingly,

22       1. The findings and recommendations issued on January 13, 2025, Doc. 11, are adopted

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25       <sup>2</sup> In one instance, the findings and recommendations appear to have misconstrued the complaint’s  
26 filing date as October 24, 2024. Doc. 11 at 3. However, reference to that date appears to have  
27 been an inadvertent typographical error and does not undermine the findings and  
28 recommendations, which correctly assessed whether plaintiff faced imminent danger at the time  
the complaint was filed and found that plaintiff had not adequately alleged any physical injury at  
that time. *Id.* at 2–3; *see also Hardin v. Wal-Mart Stores, Inc.*, No. 1:08-CV-00617 AWI GS,  
2010 WL 3745197, at \*1, n.1 (E.D. Cal. Sept. 16, 2010) (typographical error did not affect the  
substantive analysis of issues addressed by the findings and recommendations).

1 to the extent set forth above;

2 2. Plaintiff shall pay the \$405.00 filing fee within thirty (30) days of the date of service

3 of this Order if he wishes to proceed with this action; and

4 3. Plaintiff is advised that failure to pay the required filing fee as ordered will result in

5 the dismissal of this action without prejudice and without further notice.

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8 IT IS SO ORDERED.

9 Dated: June 25, 2025

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UNITED STATES DISTRICT JUDGE